

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JOYCE CHAPMAN**

Claimant

**APPEAL 15A-UI-04047-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GREAT RIVER MEDICAL CENTER**

Employer

**OC: 03/15/15**

**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from the March 25, 2015, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 4, 2015. Claimant participated. Employer participated through Christy Ford, Human Resources Generalist and Susan Fowler, Director of Nursing. Employer's Exhibits One through Six were entered and received into the record.

**ISSUE:**

Was the claimant discharged due to a current act of job-connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a sitter on as-needed basis beginning on March 4, 2013 through March 12, 2015 when she was discharged. Ms. Fowler became the claimant's supervisor on February 2, 2015 when she took over supervising the entire group of employees who worked as sitters. On February 10, Ms. Fowler was sent an e-mail list of seven issues with the claimant's behavior in the work place that included one event on December 17, 2014, one event on February 7, 2015 and five events on February 8, 2015. She began an investigation. The claimant was not notified that any investigation was ongoing until she was interviewed by Ms. Fowler on February 27, 2015. The employer ended up interviewing a total of four employees, including the claimant. There were no additional actions that needed to be taken that would have caused a delay in making the decision to discharge the claimant. The claimant violated some of the employer's rules and policies with regard to using her personal computer in a patient's room, giving a patient candy or ice cream and failing to report the claimant asking someone on the telephone for valium. The claimant should not have substituted her judgment for what was appropriate for what the employer clearly and explicating required.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(8) provides:

Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past act or acts. The termination of employment must be based upon a current act. A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." *Greene v. EAB*, 426 N.W.2d 659 (Iowa 1988).

The employer knew of the violations on February 10 but waited until February 27 to even interview the claimant and then until March 12 to discharge her. The claimant did not know her conduct was under investigation until February 27, some 17 days after the last event and months after the first event. Under these circumstances the employer has not established a current or final act of misconduct. The claimant had no prior warnings for any conduct. Because the act for which the claimant was discharged was not current and the claimant may not be disqualified for past acts of misconduct, benefits are allowed.

**DECISION:**

The March 25, 2015 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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